

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of ) RM-9259  
 )  
Compliance With Applicable Voluntary )  
Band Plans in the Amateur Radio Service)

To: The Chief, Private Wireless Division  
Wireless Telecommunications Bureau

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**COMMENTS IN OPPOSITION TO  
REQUEST FOR DECLARATORY RULING**

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**COMMENTS IN OPPOSITION TO  
REQUEST FOR DECLARATORY RULING**

I am, Thomas W. Comstock, N5TC an amateur radio operator licensed by the Commission submitting these comments in opposition to the Request for Declaratory Ruling made by the American Radio Relay League. I have been an active HF operator for many years operating all modes, on all bands. I was a member of the Board of Directors of the ARRL for fifteen years. However, I am opposed to their position in this matter. I do support the position of the American Digital Radio Society and their comments in this matter.

The Request for Declaratory Ruling, if granted, would constitute an unlawful delegation by the Commission of its rule-making authority. The Commission has no authority under the Communications Act of 1934 to make such a delegation. It is apparent that the ARRL is requesting that the Commission grant to it the right to establish "band plans" within which amateurs must operate or be subject to the charge that they have failed to observe "good amateur practice" and such sanctions as the Commission may impose. What the ARRL is proposing, since they will determine what the band plans are, is to unilaterally establish rules without legal authority. At least that is the effect of what they propose.

1. A declaratory ruling as requested by the ARRL would, be so vague and indefinite as to cause uncertainty and confusion in the amateur community. Whose band plan should be observed? What is "a voluntary, accepted band plan"? It seems to me that the term "established voluntary" is an oxymoron. If someone establishes a band plan, how can that be voluntary? If the ARRL establishes a band plan, how can that be voluntary? Is it a plan devised and monitored by ARRL? Where do more than 500,000 amateur licensee who are not members of the ARRL find the band plans? How would the issuance of a Declaratory Ruling "provide sufficient flexibility for informal, cooperative resolution of interference problems without resort to the Commission"? This request is not about *interference*. The existing rules are clear and unambiguous on the subject of interference. This request is about restricting the operating frequencies of amateurs who have a right to operate on any frequency and in any mode authorized by their license and the rules of the Commission.
2. If there is no "resort to the Commission" to resolve problems concerning the failure to observe band plan frequency allocations, what is the purpose of a declaration by the Commission that complying with band plans is "good amateur operating practice"? The Commission has a right to enforce "good amateur operating practice". Should the Commission abrogate its right of enforcement - or, should it be embroiled in hundreds of arguments among amateurs with respect to band-plans?
3. Even without the legal impediments, the establishment of band-plans, voluntary or mandatory, is thoroughly bad public policy. In its Request for Declaratory Ruling, the ARRL does not point out any need for their request, except that there has been "some notable deterioration in adherence to the plans". The ARRL states 'non-compliance

with accepted band-plans *which causes interference to one or more amateur stations that is or are operating in accordance with those accepted band-plans* cannot be considered good amateur practice' (emphasis supplied). We agree that if an amateur station is operating on any frequency (whether part of a band-plan or not) where another station is already operating such operation is not "good amateur practice". But more important, it is interference which is covered by existing, and more fundamental, regulation. But if the band-plan has set aside a frequency for packet and the frequency is not in use, the use by some other mode would, in our opinion, be "good amateur practice", simply because that would be efficient use of the spectrum. We are seeing more and more movement to set aside portions of the HF spectrum for "special" use. The only requirement needed to obtain the most efficient use of the spectrum is: "If the frequency is in use, do not transmit". The idea of setting aside a frequency so that it is available for use when a user of a particular mode comes along is wasteful of the spectrum.

4. Each country has its own rules and regulations for the amateur radio service. The operating frequencies and license privileges are uniquely under the control of the various governments. The IARU is not a governmental rule-making body. It represents no one except the individual participants in its deliberations. The ARRL is *not* "the representative of amateurs in the United States". It would be kind to say that they only represent their members who constitute about 20 percent of the U. S. amateurs. But they do not even represent their members. During the survey taken by the ARRL of its membership in 1993, a majority of the recipients opposed the establishment of sub-bands. It can be assumed that these same amateurs opposed the

establishment of band-plans. Which amateurs, then, does the ARRL represent when it tries to engage in diplomatic gyrations? If the ARRL is permitted to negotiate with foreign amateurs to deprive U.S. amateurs of their full license rights it would be an abrogation by the Commission of rights granted by Congress and, would deprive U.S. amateurs of a valuable property right without due process of law.

5. It is no secret that available space is very limited in the HF spectrum. Nowhere is that more evident than in the very popular 20 and 40 meter bands. The two oldest modes of operation, voice and CW, use the lion's share of the spectrum in those bands since they were in heavy use before there were any digital modes. The digital modes have simply "squeezed in the cracks" between already established modes of operation. Since the digital modes have become established they have expanded gradually, a little at a time, primarily into space occupied by CW operation. Frequencies near the edges of digital mode operation continue to be shared by both digital and non-digital modes. Outside of the U.S., depending on the IARU region and the rules adopted by various administrations, digital operation for any given mode may not align with practice in this country, so it seems difficult to establish a sub-band plan that could be universally acceptable. It is simply inevitable that any band segment in the HF spectrum is going to be shared among differing modes of operation. This is not a new condition on the HF bands and has been accommodated for decades.
6. Since all current HF band space is actively occupied by one or another mode of operation and since no current class of user should be required to give up space for another, gradual changes will continue to occur and these changes will be due to

natural migration as a larger percentage of amateurs shift to digital from other modes of operation and from one digital mode to another. In addition, sharing of the spectrum by all these modes should be encouraged by the Commission. The experimentation and development of new digital modes is the epitome of what amateur radio is about.

7. Except in a very few special situations, it has long been the tradition (and rule) that one amateur station must not willingly or knowingly interfere with a contact already in progress regardless of the mode of operation or the perceived importance of the communications in progress. It has also been a long-standing tradition (and rule) that no station or group of stations "own" a frequency. (Frequency "ownership" has unfortunately become a practice on certain VHF frequencies, but this practice has never been established on the HF bands.) On HF the use of voluntary sub-bands with various classes of operation gravitating to specific locations is largely self-regulating simply by virtue of the fact that a station occupying a frequency is not driven off the frequency by deliberate interference by a station operating another mode. (There are always isolated exceptions to this but it is not condoned in the rules or by the vast majority of amateur operators.) As greater numbers of amateurs use a particular mode that part of the band becomes recognized informally as a mode-specific sub-band. This is also what has always been recognized as a "voluntary band plan".

8. For the ARRL to equate the Commission's amendment of part 97 of the *Commissions Rules Concerning the Licensing and Operation of Repeater Stations in*

*the Amateur Service* (ARRL Request for Declaratory Ruling p.6) to the ARRL's current request is ludicrous. The Commission ruled in that case that there should be continuous monitoring of the frequencies to avoid interference. To understand how the ARRL jumps from interference to band-plans requires a master at Chinese Checkers.

9. Band-planning is the most ineffective method of utilizing the scarce frequencies allocated to the Amateur Service. The only requirement for the efficient use of the spectrum is: "If the frequency is in use, don't use it."

I request that the Request for Declaratory Ruling by the ARRL be rejected in its entirety.

Respectfully submitted,

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